

1 While incarcerated at FCI Adelanto in Adelanto, California, Petitioner filed a Motion for
 2 Extension of Time to File Initial § 2255 Motion with the U.S. District Court for the Central
 3 District of California. (Mot. to Extend (#1) at 1-2). Specifically, he requested at least 90 days
 4 additional time to file a federal habeas petition under 28 U.S.C. § 2255. (*Id.* at 2). The
 5 California federal district court clerk docketed his motion on December 16, 2010. (*Id.* at 1, 7).
 6 On January 6, 2011, that Court transferred Petitioner's case to this Court for want of jurisdiction.
 7 (Transfer Order (#4) at 1-2).

8 On January 24, 2011, Petitioner filed a second motion to extend, this time with the
 9 appropriate federal court, this Court, requesting an additional 30 days to file his § 2255 Motion
 10 to Vacate because he had "just received his papers from his attorney." (Mot. to Extend (CR
 11 #185) at 1). Petitioner then filed a Motion to Vacate under § 2255 in this Court on August 9,
 12 2011. (*See* Mot. to Vacate (CR #189)).

13 On July 11, 2012, this Court issued an order declining to rule on Petitioner's motion to
 14 extend and denying Petitioner's motion to vacate on its merits. (*See* Mot. to Extend (CR #185);
 15 *see also* Mot. to Vacate (CR #189); *see also* Order (CR #195) at 3, 19). The Court found that
 16 Petitioner's motion to vacate was due on February 3, 2011—one year after the Ninth Circuit's
 17 decision became final, for the purposes of 28 U.S.C. § 2255(f), on February 3, 2010. (Order (CR
 18 #195) at 5). Petitioner submitted his motion August 9, 2011, roughly six months past the
 19 deadline. (*Id.*; Mot. to Vacate (CR #189)).

20 While the Court generally dismisses untimely motions under § 2255, the Court found that
 21 Petitioner's motion for extension could have been considered based on the doctrine of equitable
 22 tolling. *See* 28 U.S.C. § 2255(f); *see also* (Order (CR #195) at 4). However, the Court held that
 23 "the issue of timeliness [was] ultimately moot because Petitioner's motion under § 2255 plainly
 24 [did] not entitle him to relief." (Order (CR #195) at 3). Further, the Court noted that there was
 25 no guiding precedent from the Ninth Circuit or the U.S. Supreme Court regarding the Court's
 26 discretion to extend the time for a petitioner to file a § 2255 motion. (*Id.* at 6).² In the order, the

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 28 ² A notable exception exists in *United States v. Battles*, 362 F.3d 1195, 1197 (9th Cir. 2004), where the Court found that equitable tolling applies to § 2255 motions. However, in the July 2012 order, the Court found that equitable tolling was ultimately irrelevant because the issue of timeliness did not require resolution. (Order (CR #195) at 8).

1 Court cited persuasive precedent from the Second Circuit Court of Appeals suggesting that the
 2 Court lacked jurisdiction to consider Petitioner's motion to extend because the claim did not
 3 present a valid case or controversy, pursuant to Article III of the U.S. Constitution. *See United*
 4 *States v. Leon*, 203 F.3d 162, 164 (2d Cir. 2000); *see also* (Order (CR #195) at 6). The Court
 5 also noted that while Rule 6 of the Federal Rules of Civil Procedure and Rule 45 of the Federal
 6 Rules of Criminal Procedure both empowered this Court to grant an extension of time to file a
 7 motion in some circumstances,³ the extension in Petitioner's case could very well have been
 8 inconsistent with Congress's imposition of strict time limitations on § 2255 filings. *See* 28
 9 U.S.C. § 2255(f) (establishing time restrictions for § 2255 motions); *see also* (Order (CR #195)
 10 at 7). Thus, this Court ultimately declined to address the previous motion to extend because both
 11 statutory and case law were unclear as to whether the Court had the power to grant such motions,
 12 and because the Court found that it did not need to address the request for an extension because
 13 Petitioner's motion to vacate did not entitle him to relief. (*See* Order (CR #195) at 7-8, 10, 19;
 14 *see also* Mot. to Extend (CR #185); *see also* Mot. to Vacate (CR #189)).

15 Discussion

16 The case before the Court involves a request for extension that has been adjudicated by
 17 this Court in its July 2012 order, though the present motion was filed in a different court and
 18 remained filed under a different docket number. (*Compare* Mot. to Extend (CR #185), *with* Mot.
 19 to Extend (#1) at 1-2). Thus, this Court applies the same rationale here as it did in its July 2012
 20 order, which declined to rule on the original motion to extend and denied Petitioner's motion to
 21 vacate on its merits. (Order (CR #195) at 19). The outstanding motion for extension at issue is
 22 moot because there is no possibility that an extension could provide Petitioner relief on a claim
 23 that has already been denied. *See id.*; *see also* (Mot. To Extend (#1) at 1-2)).

24 A motion to vacate under § 2255 must be filed in the district of conviction. *Hernandez v.*
 25 *Campbell*, 204 F.3d 861, 865 (9th Cir. 2000); (Transfer Order (#4) at 2). If the court in which a
 26 civil action is filed finds a want of jurisdiction, then the court shall transfer such action to any
 27 other court in which the action could have been brought at the time it was filed. 28 U.S.C. §

28 ³ Fed. R. Civ. P. 6(b); Fed. R. Crim. P. 45(b).

1 1631. A petition for review of administrative action—such as a habeas claim—falls into this
 2 category. *Id.* In the event of transfer, the action shall proceed as if it had been filed in or noticed
 3 for the court to which it is transferred on the date upon which it was actually filed in the incorrect
 4 court. *Id.*

5 Here, Petitioner was convicted in this Court. (Judgment (CR #143) at 1-2).⁴ Therefore,
 6 although Petitioner was incarcerated in California, he erred pursuant to *Hernandez* in filing the
 7 first motion for extension with the U.S. District Court for the District of California. (Mot. to
 8 Extend (#1) at 1-2). When that court transferred the case to this Court for appropriate
 9 disposition, this Court did not enter the motion into case number 2:06-cr-00239-RCJ-PAL.
 10 (Transfer Order (#4) at 1-2). Instead, the transferred motion remained filed under a separate case
 11 number, and became an outstanding docket. (*Compare* Mot. to Extend (CR #185), *with* Mot. to
 12 Extend (#1) at 1-2).

13 When Petitioner filed a second motion to extend in this Court—the correct jurisdiction—
 14 this Court reviewed that second motion, filed under case number 2:06-cr-00239-RCJ-PAL.
 15 (Mot. to Extend (CR #185)). In its July 2012 order, this Court declined to rule on that motion
 16 because the issue of timeliness was moot in light of the denied motion to vacate. (Order (CR
 17 #195) at 9, 19). Therefore, this Court finds that it already has adjudicated Petitioner's request for
 18 an extension of time to file his § 2255 in its prior July 2012 order. (Order (CR #195) at 19). As
 19 such, the Court denies the transferred motion seeking an extension of time as moot in light of this
 20 Court's prior order discussing Petitioner's other request for an extension of time.

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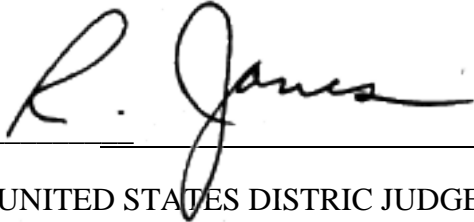
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⁴ Case No. 2:06-cr-00239-RCJ-PAL

Conclusion

IT IS ORDERED that Petitioner's Motion for Extension of Time to File Initial § 2255 (#1) is DISMISSED as MOOT.

DATED this 30th day of July, 2013.



UNITED STATES DISTRICT JUDGE